



Lawyering for Human Dignity

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LAWYERING FOR HUMAN DIGNITY

MARTHA MINOW*

There is special cause to celebrate today. Now that this event has reached its third annual moment, it is an institution! It will go on, it endures. It is a ritual—and I mean that in the best sense. Devotion to Peter Cicchino's vision of lawyering for humanity will inspire not only those who knew and loved him, but those who come after us. Like great drama or wonderful poems, his vision will prompt us to revisit and reinterpret so that we can see the world's lightness and darkness anew.

One of my favorite poems is entitled *A Ritual to Read to Each Other*.¹ I offer this poem by William Stafford to introduce my remarks about Peter and about lawyering at the margins.

A Ritual to Read to Each Other

If you don't know the kind of person I am
and I don't know the kind of person you are
a pattern that others made may prevail in the world
and following the wrong god home we may miss our star.
For there is many a small betrayal in the mind,
a shrug that lets the fragile sequence break
sending with shouts the horrible errors of childhood
storming out to play through the broken dyke.
And as elephants parade holding each elephant's tail,
but if one wanders the circus won't find the park,
I call it cruel and maybe the root of all cruelty
to know what occurs but not recognize the fact.
And so I appeal to a voice, to something shadowy,
a remote important region in all who talk:
thought we could fool each other, we should consider —
lest the parade of our mutual life get lost in the dark.
For it is important that awake people be awake,

* Professor, *Harvard Law School*. Thanks to Zachary Leeds, Anthony Lim and Anne Robinson for research assistance and for sharing ideas about the themes for this address.

1. WILLIAM STAFFORD, *STORIES THAT COULD BE TRUE: NEW AND COLLECTED POEMS* 52 (1977).

or a breaking line may discourage them back to sleep;
 the signals we give—yes or no, or maybe—
 should be clear: the darkness around us is deep.²

I never met a person more awake than Peter Cicchino. From the moment he first spoke in my 140-person Civil Procedure course, I knew that I was in the presence of someone truly extraordinary. By the end of the course, everyone in the class knew that as well. Classmates rose above the nervous, competitive law school classroom atmosphere and wildly applauded one of his last comments in the class. Then, and always, he entwined moral heft, humor and analytic clarity. He appealed to a voice in the remote region of all who talk “to know what occurs” and to “recognize the fact.”

Peter acted on his recognitions all the time—before, during, and after law school, as a lawyer and as a law professor. He fought for people who faced scorn, disapproval or disinterest. And he fought joyously for gays and lesbians, for homeless youth, for poor people, and for impoverished children. He seemed to have a specialty in fighting for students facing overzealous disciplinary actions. I don’t think he sought out causes célèbres, but he stepped up when occasions arose and elevated the moral tenor of debate while defending students facing disciplinary charges when he was an undergraduate student, when he was a graduate student, when he was a Jesuit and when he was a law student.³

The Dean objected to the selection of Peter as commencement speaker at Harvard Law School in 1992. After all, Peter had defended student protestors, the Griswold 9, who had occupied the Dean’s hallway to protest the law school’s failure to pursue diverse faculty appointments!⁴ But the students’ choice prevailed.⁵ His fellow law students picked Peter to speak at commencement not only as a sign of utter respect, but also because they wanted Peter’s words as their send-off, their admonition, their hope. How excellently, and ex-Jesuitly, Peter told the graduating law students to understand

2. *Id.*

3. See generally Peter Cicchino, *An Activist at Harvard Law School*, 50 AM. U. L. REV. 551 (2001) (illustrating a number of activities and causes Peter engaged in while attending *Harvard Law School*). For example, Peter, as Chairman of Harvard’s Committee on Gay and Lesbian Legal Issues, organized a rally on campus to promote awareness of bisexual, gay and lesbian issues. *Id.* at 558.

4. See *id.* at 562-64 (recounting the reasons behind Peter’s decision to defend the Griswold 9, including the fact that he became “emotionally bound” to the nine students and his belief that it would be wrong to leave the students “alone to face their fate”).

5. See *id.* at 564 (noting that although the Dean raised objections to Peter’s speaking at graduation due to his role in defending the Griswold 9, the university marshal allowed Peter to speak anyway).

education not as a replacement of vice with virtue, but instead as instruction in “deploy[ing] those vices for our own good and for the good of the communities in which we live.”⁶ He told the students, “Take your arrogance and afflict the comfortable. Take your contentiousness and articulate genuine political alternatives. Take your sense of entitlement to act in the world— to run things— and do so: govern, lead.”⁷

Peter’s message is no less timely today, when, in the poet’s words, “a pattern that others made may prevail in the world, and following the wrong god home, we may miss our star.”⁸ I will talk here about this disturbing time; about what lawyering at the margins in this context could mean; and about emerging sources of hope.

I. A DISTURBING TIME: THE WANING OF THE CIVIL RIGHTS PARADIGM

This is a disturbing time. Fundamental security for individual human beings to exist is in jeopardy in many parts of the world. War, terrorism, preventable illness, hunger: this is our world as much as it is also Disney, the Internet, and decoding the genome. Conflicts in South Asia and the Middle East may wind down or may instead be the prelude to a third world war. Jeopardy to civil liberties and to the fair treatment of anyone who looks “Arab” is rampant⁹ not only as the result of government action, but more seriously because of the complacency or desires of many citizens. I have a colleague who usually tries to take the most civil libertarian position on any issue — yet he has seriously argued for warrants to torture in order to gather evidence of terrorism.¹⁰ As we speak, public safety workers are still unearthing bodies at Ground Zero where the World Trade Center used to stand. Human insecurity takes on new dimensions as

6. Peter Cicchino, *Educating Our Vices*, in *Arguments for Goodness: Works of Peter Cicchino* 12 (Leti Volpp & Jonathan Springer eds., June 1992) (unpublished manuscript, on file with the *American University Journal of Gender, Social Policy & the Law*).

7. *Id.* at 13.

8. STAFFORD, *supra* note 1, at 52.

9. See generally Samuel R. Gross & Debra Livingston, *Racial Profiling Under Attack* 102 COLUM. L. REV. 1413, 1414, 1436 (2002) (arguing that the Department of Justice’s post-September 11 program in which officials interviewed men who arrived within the past two years from any country with an al Qaeda presence should still be considered racial profiling and illustrating that many opposed to racial profiling have since changed their minds due to concerns about national security); David Cole, *Enemy Aliens and American Freedoms; Experience Teaches us that Whatever the Threat, Certain Principles are Sacrosanct*, NATION, Sept. 23, 2002, at 20 (discussing the Bush Administration’s infringement on civil liberties conducted in the name of war).

10. See John Perry & Welsh While, Editorial, *Should We Torture Terrorists*, PITT. POST-GAZETTE, Nov. 18, 2001, at E1 (describing the views of Professor Alan Dershowitz with regard to “torture warrants”).

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anthrax and smallpox become tools of bio-terrorism rather than naturally occurring, but nearly cured, diseases. Misunderstandings seem to swamp moments of mutual comprehension. Cultural conflict spells not only discomfort and confusion, but death. The powerful complain of their powerlessness. The powerless become pawns in other people's murderous games.

Here in the United States, we, in this new century, bear witness to the waning, and in some sense, the reversal of the civil rights revolution. The Supreme Court closes off the toeholds for federal civil rights enforcement as it shrinks access to federal courts and diminishes congressional power.¹¹ Last year, the Court ruled that individuals may not bring suits to object to racially disparate practices in public schools.¹² For the past decade, the Supreme Court has encouraged district courts to terminate school desegregation decrees even in the face of ongoing segregation, continuing evidence of racialized educational disadvantage and resegregation.¹³ Indeed, research indicates that nationally, schools are more racially segregated than they were in 1954.¹⁴ In some contexts, affirmative action is therefore forbidden, yet our workplaces, schools, neighborhoods, and boardrooms remain racially segregated. Even efforts to promote and recognize diversity in workplaces and universities face legal challenge.¹⁵

The courts not only withhold judicial leadership; the federal courts increasingly deny the power of any public body to act on behalf of

11. See, e.g., *Bd. of Trustees v. Garrett*, 531 U.S. 356, 360 (2001) (denying access to federal courts for state employees hoping to recover monetary damages against the state for the state's failure to comply with Title I of the Americans with Disabilities Act). See generally Robert Jerome Glennon, *The Jurisdictional Legacy of the Civil Rights Movement*, 61 TENN. L. REV. 869, 932 (1994) (concluding that recent decisions have contracted the scope of federal jurisdiction).

12. See *Alexander v. Sandoval*, 532 U.S. 275 (2001) (holding that no private right of action exists to enforce disparate-impact regulations promulgated under Title VI of the Civil Rights Act of 1964).

13. See, e.g., *Bd. of Educ. v. Dowell*, 498 U.S. 237, 249-51 (holding that if the Board of Education could show the elimination of *de jure* segregation in the school to the district court on remand, then its desegregation decree would be dissolved).

14. See Gary Orfield, *Metropolitan School Desegregation: Impacts on Metropolitan Society*, 80 MINN. L. REV. 825, 838-43 (1996) (discussing the current trend toward resegregation through a return to neighborhood schools).

15. See, e.g., *Hopwood v. Texas*, 999 F. Supp. 872, 877 (W.D. Tex. 1998) (stating the University of Texas School of Law's admission procedure unconstitutional because it treated minority applicants differently than nonminorities); see also *Miss. Univ. for Women v. Hogan*, 458 U.S. 718, 733 (1982) (ruling that a state university for women could not constitutionally prohibit male students from enrolling in its nursing school); *United States v. Virginia*, 518 U.S. 515, 519 (1996) (deciding that gender-based classifications must have exceedingly persuasive justification; in this case an all-male military school's refusal to admit a woman violated equal protection and the creation of a parallel program for women was not an adequate remedy).

oppressed or disadvantaged people.¹⁶ The courts, of course, are aided by advocates, individuals dead-set on dismantling the civil rights reforms. Those who took on affirmative action have targeted Title IX's prohibition of gender discrimination in schools;¹⁷ others nibble away at the Americans with Disability Act¹⁸ or challenge outright the provision of resources to disabled students in public schools.¹⁹ Such challenges find ready ears in many courts.

Accordingly, the Supreme Court has held that Congress cannot declare domestic violence a violation of civil rights, nor can Congress give victims of domestic violence access to federal court for protection.²⁰ Congress cannot guard against distribution of guns near schools.²¹ This results in one tiny saving grace: because the Court rejected Equal Protection challenges to wealth-based practices, schools and employers can use low income as a factor in preferring applicants.²² Yet, this factor provides little help to those who need a lawyer, have limited resources and face cutbacks in legal services.

In 1974, Congress established the Legal Services Corporation ("LSC"),²³ a private, non-profit entity, to provide "equal access to the system of justice in our Nation,"²⁴ through civil legal assistance to individuals who would otherwise be unable to afford it. LSC, funded

16. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 564 (1992) (establishing the requirement that in order to have standing to bring a suit, the named plaintiff must be imminently injured).

17. See generally Ann K. Wooster, *Sex Discrimination in Public Education Under Title IX – Supreme Court Cases*, 158 A.L.R. FED. 563 (1993) (detailing the Supreme Court's application of Title IX in education-related cases).

18. See 42 U.S.C. § 12101 (1990).

19. See, e.g., *Costello v. Mitchell Pub. Sch. Dist.* 79, 266 F.3d 916, 921 (8th Cir. 2001) (holding that absent a showing of disability, refusal to provide special education services did not constitute denial of due process).

20. See *United States v. Morrison*, 529 U.S. 598, 627 (2000) (holding that Congress exceeded its authority under the Commerce Clause and Fourteenth Amendment by enacting a federal cause of action for civil rights violations in Title III of the Violence Against Women Act). See generally *Violence Against Women Act*, 42 U.S.C. § 13981(c) (1994).

21. See *United States v. Lopez*, 514 U.S. 549, 567 (1995) (concluding that the Gun-Free School Zones Act exceeded Congress' Commerce Clause authority, since the Court determined that the possession of guns in local school zones did not have a substantial effect on interstate commerce).

22. See, e.g., *Zelman v. Simmons-Harris*, 122 S. Ct. 2460, 2464 (2002) (permitting the Cleveland School District to give preference for education vouchers to low income families). However, the Court held the voucher program constitutional on grounds that the program did not violate the Establishment Clause. *Id.* at 2463.

23. See Legal Services Corporation Act of 1974, 42 U.S.C. § 2996 (1994); see also LEGAL SERVS. CORP., WHAT IS LSC? (last visited Oct. 30, 2002) (giving a brief description of the composition and purpose of the Legal Services Corporation ("LSC")), at http://www.lsc.gov/welcome/wel_who.htm.

24. 42 U.S.C. § 2996(1).

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through congressional appropriation, provides grants to local programs selected through a competition.²⁵ Legal services attorneys received some relief when the Supreme Court struck down the condition on receiving federal funds that would have stopped attorney's from initiating any form of legal representation involving reforms of federal or state welfare systems.²⁶ The Supreme Court accepted the challenge to these conditions on the grounds that the program was intended to subsidize legal services, not advance a governmental message.²⁷ Thus, a legal services lawyer speaks for the private client, not for the government.²⁸ Foreclosing the kinds of speech and activities the lawyer may pursue on behalf of a client could interfere with the lawyer's performance of his or her duties or distort the legal system and the functioning of the judiciary. Moreover, it could interrupt the ongoing representation of clients.

Yet, gaining access to a legal services lawyer is becoming increasingly more difficult.²⁹ Between 1980 and 1998, the budget for the LSC fell \$17 million in non-inflation-adjusted dollars.³⁰ In fiscal year 2000, LSC's budget was slashed by \$35 million from what was requested.³¹ Legal services offices, as a result, must engage daily in triage. Non-emergency matters—including housing, child custody

25. See LEGAL SERVS. CORP., *supra* note 23 (noting that in 2002, there were 179 local programs funded by LSC).

26. See 45 CFR §§ 1609.1-1640.1 (1996) (imposing restrictions on impact litigation by LSC).

27. See *Legal Servs. Corp. v. Velasquez*, 531 U.S. 533, 538 (2001) (listing restrictions placed upon the LSC, in particular on its use of funds in criminal proceedings, class actions, and certain private rights of action).

28. See *id.* at 540-43 (holding that in a welfare claim, the advice provided by a LSC attorney to a client cannot be classified as governmental speech since that attorney, although paid through government funding, speaks on behalf of private, indigent clients).

29. See BRENNAN CTR. FOR JUSTICE, *RESTRICTING LEGAL SERVICES: HOW CONGRESS LEFT THE POOR WITH ONLY HALF A LAWYER* 18 (2000) (analyzing why Legal Services attorneys are enormously burdened by the new restrictions placed upon them by Congress in 1996), available at <http://www.brennancenter.org/programs/downloads/Articles2.pdf>; see also Paul R. Tremblay, *Acting "A Very Moral Type of God": Triage Among Poor Clients*, 67 FORDHAM L. REV. 2475, 2514-17 (1999) (calling for poverty lawyers to seek a diversified portfolio of goals and methods despite their minimal resources, time, and funding).

30. See LEGAL SERVS CORP., *LSC STATISTICS: ANNUAL LSC APPROPRIATIONS 1980-2001* (last visited Oct. 11, 2002) (showing that in 1980, the LSC appropriation was \$300 million while in 1998 the annual appropriation was \$283 million), at http://www.lsc.gov/pressr/pr_aLSCa.htm.

31. Compare Consolidated Appropriations Act of 2000, Pub. L. No. 106-113, 113 Stat. 1501, 1501A-49 (1999) (illustrating that Congress appropriated \$305,000,000 to the LSC), with LEGAL SERVS CORP., *LSC BUDGET* (last visited Oct. 11, 2002) (showing that LSC requested \$340,000,000 from Congress for fiscal year 2000), available at <http://www.lsc.gov/pressr/budgdocs/FY2000BR.doc>.

and public benefits—often get deferred or never addressed by LSC. While some communities operate solely with attorneys who take turns visiting from other communities, other legal services offices are forced to close down.³² In community after community, legal aid for the poor has been reduced despite the proliferation of unmet needs.³³

An even more profound limitation on people's abilities to be heard and to assert legal rights can arise with the privatization of governmental programs and services.³⁴ In recent decades, public and nonprofit managers have pursued market-style reasoning to introduce internal competition, consumer choice, and cost-effectiveness within organizations pursuing broad public or nonprofit missions.³⁵ Decisions to deliver public services through private contractors—including prisons and prison medical care, welfare and food stamp distribution, and legal services for the poor—raise matters of public concern and yet remain largely shielded from public scrutiny.³⁶ As governments privatize public functions through contracts, partnerships, and voucher programs, who knows what values accompany the resulting services? When for-profit companies manage transition-to-work programs under a state welfare program,

32. See, e.g., *Cambria County: Lawyer to Aid Indigent*, PITT. POST-GAZETTE, Jan. 23, 2001, at D4 (highlighting the service work of a Cambria County, Pennsylvania, lawyer planning to visit a soup kitchen twice a month, noting such acts were funded by area Legal Services prior to budget cuts).

33. See, e.g., Nancy L. Katz, *Funds Cut, Legal Aid Jobs Axed*, N.Y. DAILY NEWS, Nov. 20, 2001, at 1 (conveying the hardship faced by New York City Legal Aid offices after the federal government cut the agency's annual \$313 million domestic violence grant under the Violence Against Women Act in 2001 and the state eliminated approximately \$200,000 in funding); Amy E. Turnbull, *N.C. Set to Cut Pay of Lawyers for Poor*, WILMINGTON MORNING STAR, Nov. 29, 2001, at 2B (examining other ways for North Carolina to reduce costs for indigent legal aid, such as requiring proof of indigence so those most in need obtain counsel); Harry Weinstein, *Funding Mechanism for Legal Aid Upheld*, L.A. TIMES, Nov. 15, 2001, at B1 (examining a Ninth Circuit decision finding the Interest On Lawyers' Trust Accounts program constitutional, but noting an adverse decision in the Fifth Circuit that may cause challenge to continue before the Supreme Court). The Interest on Lawyer's Trust Accounts program directs interest earned on client money held by attorneys to fund Legal Services, generating about \$150 million annually nationwide. *Id.*

34. See Lester M. Salamon, *The New Government and the Tools of Public Action: An Introduction*, 28 FORDHAM URB. L.J. 1611, 1612-14 (2001) (arguing that through privatization, the government is giving up the inherently governmental functions of "exercise of discretion over the use of public authority and spending of public funds").

35. See *id.* at 1611 (defining new economic possibilities to promote social action).

36. See Louise G. Trubek, *The Worst of Times . . . And the Best of Times: Lawyering for Poor Clients Today*, 22 FORDHAM URB. L.J. 1123, 1129-38 (1995) (describing how lawyers working with predominately low-income clients are developing innovative strategies to assist their clients that often mirror government programs). For example, attorneys have assisted low income individuals in starting their own businesses. *Id.* at 1129.

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do they seek to cut costs by diverting people from helpful services?³⁷ When a state contracts with a religious provider to help individuals deal with alcohol and drug addictions, the religious provider may care more about saving souls than reducing recidivism.³⁸ A private management company hired to fix a public school bypasses the school board's supervision except on the overall decision to hire or fire the management company; decisions previously subject to public review slip behind the private company's doors.³⁹

Many legal protections, such as the Due Process and Equal Protection clauses of the Fourteenth Amendment to the Constitution, apply specifically and only to actions by the government.⁴⁰ Even if the financing of a service remains largely or nearly exclusively public, if the provider is private, due process and equal protection claims may not apply.⁴¹ For example, the Supreme Court ruled that Fourteenth Amendment due process requirements does not apply to a private nonprofit school even though the school receives up to 99% of its funds from the government.⁴² Sometimes, courts are willing to view private contractors as fulfilling state functions and acting under color of state power, and therefore liable for violations that would arise were they state actors.⁴³ Courts have

37. See Matthew Diller, *The Revolution in Welfare Administration: Rules, Discretion, and Entrepreneurial Government*, 75 N.Y.U. L. REV. 1121, 1188-1220 (2000) (discussing the problem of disappearing public accountability created when governments privatize welfare administration).

38. See Karen Branch-Brioso, *Faith-Based Drug Rehabilitation Program Offers Only One Treatment: Jesus Christ*, ST. LOUIS POST-DISPATCH, Feb. 11, 2001, at A1 (illustrating that asserting that the need to avoid religious indoctrination from faith-based rehabilitation may outweigh its benefits). See generally Judith B. Goodman, *Charitable Choice: The Ramifications of Government Funding for Faith-Based Health Care Services*, 26 NOVA L. REV. 563 (2002) (discussing the merits and concerns associated with faith-based rehabilitation programs).

39. See Patricia M. Wald, *Looking Forward to the Next Millennium: Social Previews to Legal Change*, 70 TEMP. L. REV. 1085, 1099-1108 (1997) (describing the privatization of government responsibilities such as education, welfare, health care and criminal justice, and the problems associated with such privatization).

40. See *Rendell-Baker v. Kohn*, 457 U.S. 830, 843 (1982) (holding that a private school, although receiving public funds, is not a government actor and thus not liable under a § 1983 claim). But see *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 291 (2001) (holding that the actions of a private athletic association are considered state actions if pervasive relations exist between the association and the public schools).

41. See *Kohn*, 457 U.S. at 835 (establishing that a publicly funded private school was not acting "under color of state law" when it discharged teachers, and therefore could not be held liable under a § 1983 claim).

42. See *id.* at 832-33.

43. See *Milonas v. Williams*, 691 F.2d 931, 939 (10th Cir. 1982) (finding that state action exists at a private school that is subject to significant levels of state funding and regulation, as well as where students are placed at the private school by juvenile courts and school districts).

been willing to impose some public obligations on private prisons working under state contracts.⁴⁴ Once over the hurdle of establishing that the private contractor is engaging in state action, and thus subject to constitutional norms, plaintiffs (who find a way to go to court) may even be able to establish greater liability for the private actor than for a public one which would have recourse to certain governmental legal immunities.⁴⁵ Yet whether and when private actors are responsible when they step into the government's place to fulfill constitutional and other public obligations remains a complex and unsettled legal question.⁴⁶ This ambiguity affects the degree to which the private actors feel obliged to live up to those standards.⁴⁷ Articulating enforceable standards of care within government contracts with private providers would be a vital way to protect individuals,⁴⁸ and yet this too remains typically outside the purview of public debate or participation.⁴⁹

The shift to private provision of public services itself occurs through decisions that are often veiled from the public or made in small steps, rendering them nearly invisible and removed from public debate or accountability.⁵⁰ There is an assumption that market solutions may be tempered somewhat after September 11, 2001, as evidenced by calls for public funding and federal oversight of airport

44. See Ira P. Robbins, *The Legal Dimensions of Private Incarceration*, 38 AM. U. L. REV. 531, 602-03 (1989) (noting that medical services within a private prison were held to be state action and therefore publicly regulated).

45. See *Richardson v. Knight*, 521 U.S. 399, 401 (1997) (holding that prison guards who are employees of a private prison management firm are not entitled to qualified immunity from suits by prisoners bringing § 1983 violation claims). But see Michele Estrin Gilman, *Legal Accountability in an Era of Privatized Welfare*, 89 CAL. L. REV. 569, 623-24 (2001) (discussing how private welfare providers are shielded from public accountability).

46. See, e.g., *Taylor v. Charter Med. Corp.*, 162 F.3d 827, 828 (5th Cir. 1998) (demonstrating the willingness of other courts to disregard the *Milonas* holding). Here, the Court held that a charter school is not a state actor for purposes of § 1983. *Id.*

47. See Gilman, *supra* note 45, at 596 (noting widespread concerns that private organizations may be highly susceptible to corruption or conflicts of interest, and are likely to reduce the quality of services).

48. But see *id.* at 634 (discussing how, at the state level, compelling government officials to take action to comply with governing laws is very difficult). The doctrine of mandamus is often used to compel government officials to comply, however, courts will only resort to it when no other remedy is available. *Id.*

49. See *id.* at 603, 625-41 (asserting that public enforcement within privatized jurisdictions will require utilizing new and imperfect legal theories based on statutory, contractual and equitable claims).

50. See, e.g., *id.* at 579 (noting that the Temporary Assistance to Needy Families grant program decentralized privatization decisions from federal-based discretion to state-based discretion).

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security.⁵¹ Yet comparable efforts to reclaim public oversight of private prisons, private welfare-to-work programs, and private legal services have not emerged.

In sum, public participation in decisions reshaping how this society meets human needs is put in jeopardy as responsibility for people at risk devolves to the states and private actors.⁵² At best, litigation becomes a defensive tool against incursions on civil liberties and efforts to cut back on civil rights remedies, including the rights of criminal suspects and defendants.⁵³ The civil rights paradigm is waning just as suspicions based on group affiliation grow. The very question about what deserves public attention and public resources shrinks from debate. It is a dark time for progressive lawyering unless you are someone who loves a crisis.

II. LAWYERING AT THE MARGINS

From this vantage point, it is tempting to interpret the phrase "lawyering at the margins" as economists might. For economists, the margin is the outside limit, the border, the edge. Marginal gains or losses are modest. Lawyering to enforce civil rights, redress injustices, and advance new causes now seems available to create only marginal change or achieve minor interventions.⁵⁴ On other fronts, lawyers and law are busily reshaping our world, dismantling affirmative action and desegregation orders,⁵⁵ rolling back regulations and federal concern, ending welfare as we knew it,⁵⁶ justifying exceptions to civil liberties. In some halls and at some conferences, this is a moment of celebration and ascendancy. Remarkable judicial activism, Attorney

51. See 49 U.S.C. § 44910 (1994 & Supp. 2002) (requiring federal security employees for almost all civil airport security positions).

52. See Salamon, *supra* note 34, at 1614 (asserting that when private companies are hired to implement government programs, the operations of such programs are not decided by the public, but instead by private entities not accountable to the people).

53. See *generally* Taylor v. Charter Med. Corp., 162 F.3d 827 (5th Cir. 1998) (demonstrating the ineffectiveness of litigation alone as compared to more comprehensive initiatives, like building a grassroots campaign).

54. See Si Kahn, *Keep Your Eyes on the Prize*, 27 N.Y.U. REV. L. & SOC. CHANGE 89, 96-98 (2001-2002) (demonstrating the need for an organized movement to stop the trend towards privatization).

55. See *Hopwood v. Texas*, 999 F. Supp. 872, 923 (W.D. Tex. 1998) (striking down the University of Texas Law School's admissions policy which took race into account for admission to the school). *But see* Grutter v. Bollinger, 288 F.3d 732, 735 (6th Cir. 2002) (holding that the University of Michigan's Law School's admissions policy which takes race into account is narrowly tailored to the compelling interest of achieving a diverse student body).

56. See *generally* Gilman, *supra* note 45 (explaining the history of national welfare reform, and examining the implications of privatizing welfare).

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General activism, and effective creation and translation of legal scholarship into practice have dislodged the New Deal and Civil Rights reforms and brought us to this place.

From a different vantage point, that of swift technological and biological change, all law appears marginal.⁵⁷ Genetic and molecular research reshapes the possibilities for growing, revising, prolonging, and repairing living beings, daily, from rice, to sheep, to humans.⁵⁸ Law comes in as an afterthought: who should own the resulting intellectual property? How should individual privacy be defined and preserved?⁵⁹ Information technology revamps how we communicate, what we know, even who is “we,” redefined in virtual communities.⁶⁰ Again, law addresses who owns what in this environment, with what kinds of privacy. Even though the changes from science and technology take center stage, lawyers can pull temporary curtains, say who can charge admission, and urge that people launched into new informational vistas connect with people closed off from them.⁶¹

Yet we can also view lawyering at the margins in terms of the broader vision of human dignity permitted only when those marginalized by social and economic structures are central. This means they are central actors as well as central concerns. In her book, *Feminist Theory: From Margin to Center*, bell hooks describes growing up as a black American in a small Kentucky town on the “other side” of the railroad tracks.⁶²

Across those tracks were

paved streets, stores we could not enter, restaurants we could not eat in . . . people we could not look directly in the face We could enter that world but we could not live there. We had always to return to the margin, to cross the tracks, to shacks and abandoned houses on the edge of town.⁶³

Yet, she notes, by living on the edge, she developed a way of looking

57. See Elizabeth L. Shanin, *International Response to Human Cloning*, 3 CHI. J. INT'L L. 255, 258 (2002) (noting scientists' disregard for anti-cloning laws by performing cloning research in countries that have no such restrictions).

58. See *id.* (describing research efforts of scientists to clone humans for fertility purposes).

59. See *id.* at 256 (noting U.S. failure to establish laws concerning cloning issues).

60. See J.M. Spectar, *Bridging the Global Digital Divide: Frameworks for Access and the World Wireless Web*, 26 N.C. J. INT'L L. & COM. REG. 57, 59-60 (2000) (discussing the growing “digital divide” between people who have access to the internet and those who do not).

61. See *id.* at 57 (examining how best to bridge the digital gap between developed countries and lesser developed countries).

62. See BELL HOOKS, *FEMINIST THEORY: FROM MARGIN TO CENTER* 10-12 (Manning Marble ed., 1984).

63. *Id.* at ix.

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“both from the outside in and from the inside out,” and a strengthened sense of self and solidarity in her struggles to transcend poverty and despair.⁶⁴ Lawyering at the margins should mean lawyering with this double vision. It means lawyering for and with people who are marginalized, and lawyering for the strengthened sense of self and solidarity to promote struggles against practices that deny the people’s human dignity.⁶⁵

This conception of lawyering has recently faced criticism by some progressive lawyers and law professors. Such critiques can instill valuable humility, but they also risk a kind of paralysis.⁶⁶ Legal services lawyers and clinical legal educators for years have pursued dedicated work on behalf of poor and poorly treated people—and also worked to challenge misconceptions about their clients.⁶⁷ Michelle Jacobs emphasizes the awareness around cultural and racial differences that lawyers and law students must develop if they truly put clients at the center rather than at the margins of their work.⁶⁸ Lucie White gives us Mrs. G., a client whose understanding of the

64. *Id.*

65. See Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659, 666-711 (1987-1988) (exploring the perceptions behind poverty law and putting forth ways in which the field could change). For instance, lawyers in this field can best aid the poor through efforts empowering their clients to take action through grassroots organization. *Id.* at 665. See generally Stephen Ellmann, *Lawyers and Clients*, 34 UCLA L. REV. 717, 779 (1987) (examining the relationship between lawyers and their clients and concluding that the relationship by its nature spurs manipulation of the client and takes away the client’s decision-making power); ROBERT M. BASTRESS & JOSEPH D. HARBAUGH, INTERVIEWING, COUNSELING, AND NEGOTIATING: SKILLS FOR EFFECTIVE REPRESENTATION 109-30 (1990) (discussing four important “helping” skills a lawyer should use to promote a successful lawyer/client relationship: empathy, genuineness, concreteness and respect).

66. See Margaret Martin Barry et al., *Clinical Education for this Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 32-38 (2000) (noting the lack of acceptance of law school clinics and how harmful the resistance to progressive lawyering can be).

67. See JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 9-12 (Supp. 2000) (describing habits lawyers should develop to challenge misconceptions and misunderstandings of clients). The five habits are: (1) take note of the differences between the lawyer and the client; (2) using a graphic format, map out the case, taking into account the different cultural understandings of the lawyer and the client; (3) brainstorm additional reasons for puzzling client behavior; (4) identify and solve pitfalls in lawyer-client communications to allow the lawyer to see the client’s story through the client’s eyes; and (5) examine previous failed interactions with the client and develop pro-active ways to ensure those interactions do not take place in the future. *Id.*; see also Barry et al., *supra* note 66, at 63-64 (suggesting that Peters’ five habits will also encourage diversity amongst clinical educators).

68. See Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345, 353-61 (1997) (suggesting that clinical educators need to educate the court so that it also becomes more aware of cultural differences, and focus more on self-awareness training in the classroom so law students learn how to adapt to clients coming from different backgrounds).

cultural context and of her own needs is deeper than that of her attorney—a younger Lucie, who had tried to advise the client before a welfare benefits administrative hearing.⁶⁹ Gerald Lopez mobilizes lawyers and law students around the image of the anticonventional, “rebellious lawyer” to question whether traditional lawyering actually empowers or helps marginalized clients.⁷⁰

Self-examination rightly presses lawyers to work not for, but *with* people at the margins.⁷¹ One method uses clinics to equip clients to represent themselves in various circumstances. Often, empowering individuals to advocate for themselves recognizes and honors their own dignity.⁷²

Yet, self-help, even when supported through expert assistance, should not become the driving vision behind lawyering for people at the margins. Most poor people have to negotiate for themselves daily, maneuvering through social and economic frameworks where they are systematically disadvantaged.⁷³ Sometimes, the best way to honor the dignity of disempowered persons is *not* to expect them to advocate for themselves, but instead to ensure their representation by the toughest, most high-powered lawyer available—just as a wealthy corporate client can expect.

It was Peter Cicchino who gave the most pointed, effective, and needed challenge to internal self-doubt in left-leaning legal scholarship when he spoke at a conference on political lawyering in 1995. He challenged his own allies and teachers. He said he wanted to disturb orthodoxies held by liberals and leftists, including the view

69. See Lucie White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1, 19-32 (1990) (describing the case study of Mrs. G., where a progressive lawyer learned that her client knew better than the lawyer did how to present her case).

70. See generally GERALD LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992); see also Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street Level Bureaucracy*, 43 HASTINGS L.J. 947, 953 (1992) (discussing Lopez's client-centered “rebellious lawyering” as both a positive and negative way to approach public interest law).

71. See Tremblay, *supra* note 70, at 950-54 (discussing how lawyers must change their views of the traditional lawyer/client relationship to truly help marginalized clients).

72. See Andrea M. Seielstad, *Community Building as a Means of Teaching Creative, Cooperative, and Complex Problem Solving in Clinical Legal Education*, 8 CLINICAL L. REV. 445, 451 (2002) (discussing the importance of empowering clients, particularly when working with underrepresented communities); see also Karen L. Loewy, *Lawyering for Social Change*, 27 FORDHAM URB. L.J. 1869, 1895 (2000) (suggesting that empowering clients allows them to speak in their own voices and solve their own problems without always having to rely on lawyers).

73. See Seielstad, *supra* note 72, at 453-54 (emphasizing that lawyers can help bring skills, knowledge, and motivation to poor people to help them better approach future problem-solving).

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that “our clients [the poor and oppressed people we serve] know what is best for them.”⁷⁴ Instead, Peter argued that

[O]nly someone completely ignorant of Marx and Freud would assume that the poor, impoverished, and often physically brutalized people whom lawyers like us represent have the keenest insight into their own legal problems and understand the best ways of dealing with them. The fact is, as Marx showed us, most people don’t understand their oppression, and as Freud taught, even those who understand their oppression frequently love that oppression.⁷⁵

Peter urged lawyers to view themselves as the kind of friend who challenges people who have been ground down by oppression to view themselves as full human beings.⁷⁶ He also urged lawyers to resist the permanent uncertainty that results if they believe that they cannot understand anyone of a different race, gender, sexual orientation or economic background.⁷⁷ He reminded us that “the thing that is so shocking about human reality is not that we misunderstand one another, but conversely, that we are so capable of understanding each other, and therefore coming to each other’s aid.”⁷⁸ We share basic needs for food, shelter, work, education and liberty—and the capacity to resist oppressive denial of those needs.⁷⁹

Recognizing commonality does not mean pretending to be the same; it means sharing a commitment to try to align with others. I think this is what Gary Bellow meant when he asked whether lawyers are in such danger of imposing their will on poor or oppressed clients that they should not press their own views.⁸⁰ He explained:

I also made commitments to my clients and their ends, commitments that were supported by life choices concerning where I lived and with whom I spent my time . . . I surely influenced and argued with those I served, often loudly and long.

74. Peter M. Cicchino, *To Be a Political Lawyer*, 31 HARV. C.R.-C.L. L. REV. 311, 311 (1996).

75. *Id.* at 311-12.

76. *See id.* at 311.

77. *See id.* at 312 (stating that connection is possible if people embrace the fact that we can understand each other, and that this is when lawyers are most able to be helpful).

78. *Id.*

79. *See* Peter Cicchino, *Defending Humanity*, 9 AM. U. J. GENDER SOC. POL’Y & L. 1, 4 (2001) [hereinafter Cicchino, *Defending Humanity*] (discussing that we all share the same basic human rights and that it is human nature to resist denial of these rights).

80. *See* Gary Bellow, *Steady Work: A Practitioner’s Reflections on Political Lawyering*, 31 HARV. C.R.-C.L. L. REV. 297, 302 (1996) (suggesting that while lawyers should not abuse their power to influence clients’ decisions, they should be able to express their views if there is truly to be an alliance between lawyer and client).

But I, in turn, was influenced and argued with as well, and felt justified in asserting my views only because I also felt open to being overruled or outvoted.

Alliance seems as good a word as any to describe this relationship because alliance generates bonds and dependencies and is grounded, at least in aspiration, in forms of respect and mutuality that are far more personal and compelling, for many of us who do political legal work, than the demands of some notion of client-centered lawyering, no matter how strongly held.⁸¹

Yes, lawyers and law professors should reflect, and remain or become humble. But we should also work to bridge any sense of distance from the client and align ourselves with the client's hopes and dreams.⁸² Those who lawyer for the marginalized must chiefly remember to connect, to come to the aid of others, to act.⁸³

III. SOURCES OF HOPE

Lawyers, law professors and law students have indeed been acting. I perceive three distinct developments in the work of lawyers who are committed to people at the margins and the pursuit of vital and promising strategies for the future. People have invented such approaches partly out of necessity, as more traditional court-focused civil rights work meets barriers and opposition in the federal courts. Each development also, quite rightly, moves lawyers away from the director's chair, to membership on a team. Each demonstrates how lawyers can work with, as well as on behalf of, those who are marginalized. In the first development, lawyers increasingly join with others in multidisciplinary problem-solving;⁸⁴ in the second, lawyers

81. *Id.* at 302-03 (emphasizing that this alliance allows an "honestly mutual relationship").

82. See Loewy, *supra* note 72, at 1885 (reasoning that completely separating oneself from one's client emotionally is not necessary because having a moral and emotional connection to one's client can result in more zealous advocacy). See generally Paul Tremblay, *The Crisis of Poverty Law and the Demands of Benevolence*, 1997 ANN. SURV. AM. L. 767, 773-81 (1997) (discussing that poverty attorneys pay attention to the needs of their clients beyond immediate legal concern and suggesting that helping in these areas improves their clients' daily lives); Cornel West, *The Role of Law in Progressive Politics*, 43 VAND. L. REV. 1797, 1798 (1990) (discussing that conflicts in American society, arising out of differences in race, class and sexual orientation, strongly influence the law).

83. See Cicchino, *supra* note 6, at 35 (explaining later that he replaced his prepared remarks at the conference for an extemporaneous speech because he "was so exasperated by my encounters with what I took to be a mindless, contemporary, culturally leftist orthodoxy that romanticizes—and thereby dehumanizes—poor and oppressed people, and by the detachment of the law professoriat from the struggles of poor human beings").

84. See, e.g., Barry et al., *supra* note 66, at 63 (suggesting the benefits of approaching client problems on multiple levels).

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move from court-based adversarial advocacy to community economic development work;⁸⁵ and in the third, lawyers shift from civil rights to human rights as the governing framework.⁸⁶ I will explore each, at the risk of over-emphasizing the contrasts among them, when in fact many people are engaging in work that fits all three descriptions.

A. From Law to Multidisciplinary Practice

As Louise Trubek and Jennifer Farnham describe their work in Wisconsin with low- and moderate-income people, lawyers join with lay advocates, other professionals and members of community agencies to work together on solving problems over the long term.⁸⁷ This requires a long-range commitment to the client group. The lawyers must be able to move nimbly between acting as an expert and as a collaborator. As experts, attorneys offer advice on interpreting specific legal materials; as collaborators, they are one of many who share ideas about tactics, strategies and goals.⁸⁸ Regular evaluations and accountability among the extended group become essential.⁸⁹

Similarly, Margaret Barry, Jon Dubin and Peter Joy explain how their work with multidisciplinary, problem-solving efforts requires transcending doctrinal areas to address client issues.⁹⁰ Because the issues themselves involve interconnected problems, so must the solutions. For example, Barry and colleagues relate that, "elder law advocates have cautioned against approaching client legal problems in isolation from financial, psychological, medical and religious issues

85. See, e.g., Seielstad, *supra* note 72, at 451 (discussing the impact of a community economic approach to lawyering and suggesting long-term benefits of reducing clients' need for future help by empowering them and investing them with skills and resources to address their own problems).

86. See, e.g., Leti Volpp, *Righting Wrongs*, 47 UCLA L. REV. 1815, 1833-34 (2000) (suggesting that lawyers in the United States are looking beyond civil rights to international human rights law for solutions to legal problems).

87. See Louise G. Trubek & Jennifer J. Farnham, *Social Justice Collaboratives: Multidisciplinary Practices for People*, 7 CLINICAL L. REV. 227, 256-72 (2000) (proposing a manner in which lawyers can operate within the "social justice collaborative" which encourages networking amongst local and national entities to achieve the best result for clients).

88. See *id.* at 260-61 (explaining that lawyers must be both professionals and collaborators). Lawyers are professionals in their role as officers of the court; they are collaborators as people who will promote equal access to justice for everyone, even if it means adapting new protocols or changing the system. *Id.*

89. See *id.* at 264-65 (describing how collaborative groups are developing systems to address quality and accountability systems in order to assure professional responsibility, problem resolution and client satisfaction).

90. See Barry et al., *supra* note 66, at 63; see generally James M. Cooper, *Conceiving the Lawyer as Creative Problem Solver: Towards a New Architecture: Creative Problem Solving and the Evolution of Law*, 34 CAL. W. L. REV. 297 (1998) (explaining that the law regulating society will change only through creative problem solving).

since loneliness, fear, anxieties about aging, financial problems, and family concerns, often accompany the elderly client's legal problems."⁹¹ To prepare for this kind of work, legal education itself should shift to replace one-on-one Socratic questioning focused on appellate opinions with collaborative modes of learning and case studies,⁹² preferably joining law students with students in social work, psychology, public health, economics, and other relevant fields.⁹³

Current advocacy for victims and survivors of domestic violence supplies a strong example of collaborative work.⁹⁴ Traditional one-on-one legal services representation is simply inadequate. There are never enough lawyers to go around and triage in legal services offices often leaves domestic violence victims without timely help. Moreover, the usual court-based remedies of temporary and permanent civil protection orders, even when joined with support and child custody, are too often insufficient.⁹⁵ Innovative efforts to generate mandatory arrests and mandatory prosecutions produce intense debates and complex results, including potential escalations of perpetrator violence from which victims must be protected.⁹⁶ By conventional

91. Barry et al., *supra* note 66, at 66.

92. See *id.* at 72 (explaining how this method can be learned at the law school level).

93. See *id.* at 67 (emphasizing that law schools should educate students to be effective problem solvers by training them in more than the traditional legal skills); see also Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 CLINICAL L. REV. 157, 161-62 (1994) (describing a clinical program she designed that combined various approaches to problem-solving).

94. See Stacy Brustin, *Expanding Our Vision of Legal Services Representation—the Hermanas Unidas Project*, 1 AM. U. J. GENDER & L. 39, 49-54 (1993) (discussing the lawyering models used by the Hermanas Unidas project, a program utilizing conferences and workshops to address domestic violence in the Latino community in Washington, D.C.).

95. See Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 1045-48 (1993) (reviewing courts' approaches to civil protection orders and suggesting that, while they may serve some benefit, there is no consistency in how they are enforced); Lowell T. Woods, *Anti-Stalker Legislation: A Legislative Attempt to Surmount the Inadequacies of Protective Orders*, 27 IND. L. REV. 449, 457-58 (1993) (stating that protective orders are often inadequate to provide protection because enforcement and sanctions are insufficient).

96. See Marion Wanless, *Mandatory Arrest: A Step Toward Eradicating Domestic Violence, But is it Enough?*, 1996 U. ILL. L. REV. 533, 534-35 (1996) (describing the debate over mandatory arrest laws and emphasizing that supporters argue such laws impose the view of domestic violence as a crime, but that opponents view the laws as too simplistic a solution for such a complex problem and argue that they may actually increase domestic violence); see also Linda G. Mills, *Killing Her Softly: Intimate Abuse and the Violence of State Intervention*, 113 HARV. L. REV. 550, 562 (1999) (advancing the view that mandatory arrest and reporting may deter women from seeking medical treatment, endangering their lives further). But see Michaela M. Hootor, *Domestic Violence as a Crime Against the State: The Need for Mandatory Arrest in California*, 85 CAL. L. REV. 643, 647-48 (1997) (arguing that mandatory arrest takes

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standards of cases won and legislation adopted, the domestic violence situation looks like an exceptional success over the past twenty years. However, the lawyers most deeply involved in the field have joined ambitious efforts to break away from strictly legal responses and participate instead in collaborative, multidisciplinary work.

Stacy Brustin, Judge Judith Kaye, Louise Trubek and Elizabeth Schneider each describe the vital role of collaborative work in advocacy around domestic violence.⁹⁷ Emotional abuse often leaves victims feeling powerless.⁹⁸ Counseling, therapy, consciousness raising among peers, intensive training for emergency room staff, judicial clerks and judges, public education, and evaluation of programs become vital and require lawyers to work interdependently with other helpers.⁹⁹ Mental health professionals and social service advocates are essential partners in the Domestic Violence Intake Center in Washington, D.C., and often interns from local hospitals are also present to provide walk-in clients with medical assistance.¹⁰⁰ Substance abuse clinics and child welfare services have become part of coordinated community responses to domestic violence.¹⁰¹ Pro se clinics embedded in community agencies enable domestic violence survivors to rely on themselves and their communities. Many agencies combine legal, social, medical services, housing assistance, job counseling, and grassroots organizing in order to provide broader solutions.

the focus off victims and puts it where it belongs, on perpetrators).

97. See Judith S. Kaye & Susan K. Knipps, *Judicial Responses to Domestic Violence: The Case for a Problem Solving Approach*, 27 W. ST. U. L. REV. 1, 5-12 (1999-2000) (describing how the judicial system needs to change in order to develop a deeper understanding of domestic violence cases); Elizabeth M. Schneider, *Particularity and Generality: Challenges of Feminist Theory and Practice in Work on Woman-Abuse*, 67 N.Y.U. L. REV. 520, 567 (1992) (discussing the need to recognize and intertwine women's practical experience with domestic violence and feminist theory on woman-abuse); Trubek, *supra* note 36, at 1124-28 (discussing the importance of combining legal representation with non-legal support to effectively advocate for victims of domestic violence).

98. See Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE J.L. & FEMINISM 3, 8-10 (1999) (commenting on the history of abuse towards women and how society treats women as powerless in relation to their male counterparts).

99. See Kaye & Knipps, *supra* note 97, at 6 (asserting that traditional lawyering does not provide an effective method for dealing with domestic violence cases).

100. See U.S. ATTORNEY'S OFFICE FOR D.C., VICTIM/WITNESS ASSISTANCE UNIT (last visited Oct. 14, 2002) (emphasizing that the Intake Center provides a multitude of services for victims and works with over 1,200 victims each year), at <http://www.usdoj.gov/usao/dc/vw/vw.html>.

101. See D.C. COALITION AGAINST DOMESTIC VIOLENCE, WHAT WE DO (last visited Oct. 14, 2002) (explaining the numerous branches of the Domestic Violence Intake Center), at <http://www.dccadv.org/what.htm>.

These efforts require more than lawyers know, and thus call for collaboration.¹⁰² Such efforts also help to counteract the occupational hazard of lawyers to think inside the box, to be technically chauvinistic and to believe that existing structures are good or inevitable. Collaborative work has inspired the creation of domestic violence courts addressing nonlegal, as well as legal issues, and helping victims mobilize resources while also connecting offenders with counseling and substance abuse programs.¹⁰³

B. From Litigation to Community Economic Development

Transactional law school clinics exemplify the movement from litigation to community economic development ("CED").¹⁰⁴ These

102. See DOMESTIC VIOLENCE: FROM A PRIVATE MATTER TO A FEDERAL OFFENSE; CRIMES OF DOMESTIC VIOLENCE 77-83 (Patricia G. Barnes ed., 1998) (outlining suggestions and programs for improved domestic violence education and awareness for the police, the legislature and the community); Epstein, *supra* note 98, at 23-38 (discussing the need to augment the traditional court system by requiring collaboration between all agencies involved with victims of domestic violence); Jennifer R. Hagan, *Can We Lose the Battle and Still Win the War?: The Fight Against Domestic Violence After the Death of Title III of the Violence Against Women Act*, 50 DEPAUL L. REV. 919, 981-82 (2001) (stating the importance and need for comprehensive domestic violence prevention plans that incorporate community, advocacy and legal aid).

103. See, e.g., Hagan, *supra* note 102, at 980-81 (noting the positive effects of courts created solely to handle domestic violence cases, such as the ability to address situations before they become fatal and the fact that court personnel are more familiar with the nuances of domestic violence because they address these situations on a daily basis); Betsy Tai, *The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation*, 68 FORDHAM L. REV. 1285, 1296-1320 (2000) (asserting that some states' domestic violence court programs are more helpful than traditional courts in dealing with domestic violence because they combine legal advocacy with other social services); Elena Salzman, *The Quincy District Court Domestic Violence Prevention Program: A Legal Framework for Domestic Violence Intervention*, 74 B.U. L. REV. 329, 338-39 (1994) (noting the success of domestic violence prevention programs that treat domestic violence as a legal and a social issue); see also Margaret Martin Barry, *A Question of Mission: Catholic Law School's Domestic Violence Clinic*, 38 HOW. L.J. 135, 148-59 (1994) (describing several law school clinics that deal with indigent and/or abused clients and how they exemplify the collaboration and community understanding needed for successful advocacy and client empowerment).

104. See Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLINICAL L. REV. 195, 207 (1997) (describing the evolution and benefits of community economic development ("CED") clinics in clinical legal education); Brian Glick & Matthew J. Rossman, *Neighborhood Legal Services as House Counsel to Community-Based Efforts to Achieve Economic Justice: The East Brooklyn Experience*, 23 N.Y.U. REV. L. & SOC. CHANGE 105, 110 (1997) (describing the importance of CED and how lawyers and law clinics can help communities reach their economic goals); Peter Pitegoff, *Law School Initiatives in Housing and Community Development*, 4 B.U. PUB. INT. L.J. 275, 276-82 (1995) (discussing the elements necessary for a successful law school clinic in housing and economic development by analyzing clinical programs observed at three law schools); Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443, 460-65 (2001) (describing the evolution and importance of lawyering that combines legal advocacy and grassroots action to

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clinics, and similar efforts undertaken by lawyers outside of law schools, help poor people develop their own small businesses, construct or leverage lending arrangements for small loans, and provide technical assistance in starting up an enterprise and obtaining federal small business assistance.¹⁰⁵ Even libertarian free market advocates embrace this idea, as witnessed by the Institute for Justice Clinic for Entrepreneurship at the University of Chicago Law School, supported by the Olin Foundation and the Annie E. Casey Foundation.¹⁰⁶ This clinic helps poor clients develop business plans while giving them assistance in obtaining seed capital, research on intellectual property issues, and other legal support.¹⁰⁷

Other CED efforts emphasize change for an entire community.¹⁰⁸ Particular communities become the client, or the effort focuses on a particular practice such as minority business development.¹⁰⁹ Ethical issues arise around confidentiality and conflicts of interest, but there are also thoughtful ideas about how to handle them.¹¹⁰ The focus on transactional lawyering can empower individual clients while

promote CED); Daniel S. Shah, *Lawyering for Empowerment: Community Development and Social Change*, 6 CLINICAL L. REV. 217, 218-21 (1999) (discussing the effects of lawyers on CED and the reality of practicing community development law in impoverished neighborhoods).

105. See Jones, *supra* note 104, at 209 (describing specific programs and efforts of certain CED law clinics which promote economic growth); Pitegoff, *supra* note 104, at 278 (noting how Yale's CED clinic supports poor people seeking to start a business by utilizing social services and other non-legal sources).

106. See, e.g., William H. Mellor & Patricia H. Lee, *Institute for Justice Clinic on Entrepreneurship: A Real World Model in Stimulating Private Enterprise in the Inner City*, 5 J. SMALL & EMERGING BUS. L. 71, 72-73 (2001) (noting that the University of Chicago Law School's Institute for Justice Clinic is novel in its dedication to helping low-income entrepreneurs succeed in the private sector).

107. See *id.* at 82-83 (describing how the clinic works and the variety of services it provides).

108. See Anthony V. Alfieri, *Practicing Community*, 107 HARV. L. REV. 1747, 1763-64 (1994) (reviewing GERALD P. LOPEZ, *REBELLIOUS LAWYERING: ONCE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992)).

109. See, e.g., *id.* (noting that preexisting communities may need legal representation or may be formed by such a need).

110. See Janine Sisak, *If the Shoe Doesn't Fit . . . Reformulating Rebellious Lawyering to Encompass Community Group Representation*, 25 FORDHAM URB. L.J. 873, 878 (1998) (discussing how "rebellious lawyering" serves to empower impoverished clients rather than further subordinating them by simply solving their problems); Shauna I. Marshall, *Mission Impossible?: Ethical Community Lawyering*, 7 CLINICAL L. REV. 147, 211-24 (2000) (asserting practical suggestions, such as using a retainer agreement at the beginning of a project and allowing the retainer to be flexible depending on the shift of project's goals, for community lawyers to use so as to avoid ethical dilemmas); Stephen Ellmann, *Client-Centeredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers' Representation of Groups*, 78 VA. L. REV. 1103, 1122-27 (1992) (examining the conflicts between a lawyers' interest in protecting individual autonomy as well as group involvement when representing communities as a whole).

engaging them and their lawyers in collaborations with people who have other kinds of expertise.¹¹¹ It can also equip people to demand participation when governments privatize public hospitals and other public services.¹¹²

With networks of community members or community agencies, churches, and bankers at the table, lawyers participate as one source of insight and expertise among several, diminishing risks of lawyer dominance.¹¹³ Helping residents of impoverished areas create their own nonprofit organizations, seek contracts to provide governmentally-financed services, and participate in building housing, CED initiatives like the Brooklyn Legal Services Corporation act as in-house counsel for local groups around corporate, real estate, tax and regulatory matters.¹¹⁴

Entrepreneurial advocacy for poor people can aim to enhance individual social mobility; it can promote neighborhood control and self-sufficiency; or it can emphasize citizen self-governance, using economic projects to strengthen community power and participation in politics.¹¹⁵ One commentator suggests community empowerment work has pursued each of these goals successively over the past four decades.¹¹⁶ If the funding source is largely governmental, there is a risk that the community development initiative will be undermined by growing dependence on the government or by the subversion of local priorities in favor of those set by Washington.¹¹⁷

These risks could be tackled through the rebellious lawyering

111. See Ann Southworth, *Taking the Lawyer Out of Progressive Lawyering*, 46 STAN. L. REV. 213, 229-30 (1993) (commenting on a lawyer's need to collaborate with others in order to effectively represent a community).

112. See *id.* at 217 (discussing how traditional lawyering can help clients resolve their own problems in the future if the attorney allows the client to collaborate, which will give clients more power to take action themselves).

113. See Richard D. Marsico, *Working for Social Change and Preserving Client Autonomy: Is There a Role for "Facilitative Lawyering?"*, 1 CLINICAL L. REV. 639, 658 (1995) (discussing "facilitative lawyering," which encourages the attorney to only provide the limited legal assistance requested by the client rather than collaborating with the client on the project, as way to provide legal aid, client autonomy and community empowerment without creating client subordination).

114. See Glick & Rossman, *supra* note 104, at 116-61.

115. See *id.* (describing the work of Brooklyn Legal Services Community Development Unit as effective legal advocacy because it serves to empower the community and makes clients more self-sufficient in dealing with business ventures).

116. See Shah, *supra* note 104, at 218 (arguing that the development of these goals has occurred because individuals with different viewpoints have been able to manipulate the processes of development to meet their own needs).

117. See *id.* at 224 (proposing that certain government policies attempting to help impoverished communities can actually increase existing economic hardship by furthering socio-economic segregation).

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advocated by Gerald Lopez, although his central argument addresses the dangers of lawyers dominating the poor people they mean to serve.¹¹⁸ Lopez urges public interest lawyers to “ground their work in the lives of the communities of the subordinated themselves”¹¹⁹ and pursue, alongside their neighbors, collective responses to community problems. One superb example is the Workplace Project, a nonprofit center, which has organized over 200,000 Latino immigrants on Long Island to challenge exploitation at work.¹²⁰ The project has used litigation, lobbying for new legislation, work stoppages, media campaigns and the exchange of individual legal services for client participation in the collective project.¹²¹ Community organizing is a key element; lawyers may help or else collaborate with others better trained in organizing.¹²²

It would be a mistake to treat CED initiatives as a replacement for individual advocacy, because direct legal advocacy cannot by itself remake structures of inequality even though it is a critical tool.¹²³ For instance, it remains crucial to still represent individuals in eviction matters. Brooklyn Legal Services successfully prevents eviction in 95% of the cases it undertakes;¹²⁴ there simply are not enough of such services to meet the needs of the entire eligible population.

Yet, at least as valuable are efforts to build affordable housing, to link individuals to good jobs (and the training necessary to get and keep them), and to help people become their own bosses as entrepreneurs in small business, such as day care centers, bakeries,

118. See Alfieri, *supra* note 108, at 1757 (outlining Lopez’s themes which emphasize educating the client, the members of the community, about the law and allowing the client to educate the attorney).

119. LOPEZ, *supra* note 70, at 38.

120. See Jennifer Gordon, *We Make the Road by Walking: Immigrant Workers, The Project, and the Struggle for Social Change*, 30 HARV. C.R.-C.L. L. REV. 407, 428 (1995) (indicating that the author developed the Workplace Project in 1992 to address problems faced by Latino immigrants).

121. See *id.* at 430-34.

122. See Loretta Price & Melinda Davis, *Seeds of Change: A Bibliographic Introduction to Law and Organizing*, 26 N.Y.U. REV. L. & SOC. CHANGE 615, 616 (2000-2001) (discussing the relationship between public interest law and community organizing and how the two intersect to promote effective lawyering).

123. See Cummings & Eagly, *supra* note 104, at 498 (asserting that some groups of clients may be harder to organize under a CED approach, and that for these clients individual advocacy would better serve their needs).

124. See SOUTH BROOKLYN LEGAL SERVS., MAKE A CONTRIBUTION (last visited Oct. 24, 2002) (indicating that the organization helps over ninety-five percent of the approximately 425 families for whom it provides direct representation in eviction cases keep their homes), available at <http://app.etapestry.com/happ1/South%20Brooklyn%20Legal%20Services/OnlineGiving.html?>

grocery stores, repair work, and internet services.¹²⁵

I see real signs of hope in the growing numbers of efforts joining lawyers with community members for just such purposes and in the keen interest among law students to devise new nonprofit initiatives, learn organizing skills and finance, and assist people in low-income communities in imaginative efforts to rebuild their own worlds.

C. *From Civil Rights to Human Rights*

My class met recently with Alan Jenkins, a lawyer who has worked at the NAACP Legal Defense Fund and the U.S. Solicitor General's office, but now heads the Ford Foundation initiatives in civil rights, CED, and human rights. After he explained his own journey from litigation to investment in communities, Jenkins fielded questions and answered one by admitting that his current job is less stressful than his previous litigation positions. One student asked a question about her own career plans that illuminated a current issue that affects both investors and litigators concerned with people at the margins. The student asked if she had to pick between civil rights and human rights work; the various groups in each field seemed to have nothing to do with one another, and even appeared to use different language and conceptions. Jenkins replied that he and others are trying to bridge that gap and that the realization of this link might well be the struggle for the incoming generation of advocates.

Civil rights implies a domestic concern; human rights implies an international one.¹²⁶ Yet this distinction actually is incoherent.¹²⁷ Surely human rights issues arise in the United States, as elsewhere, for example, with regard to the detention of Arabs since September 11, 2001, the conditions in many prisons and the practice of the death penalty.¹²⁸ In fact, civil rights are a subset of human rights: civil

125. See Jones, *supra* note 104, at 197-99 (commenting on how CED serves to aid the community as a whole as well as help individuals succeed in small business ventures).

126. See Catharine A. MacKinnon, *Crimes of War, Crimes of Peace*, 4 UCLA WOMEN'S L.J. 59, 80-81 (1993) (discussing how civil and human rights differ in terms of how they are enforced).

127. See *id.* (suggesting the abstract nature of the divide between civil and human rights creates a tension between them).

128. See Leslie Castro et al., *Perversities and Prospects: Whither Immigration Enforcement and Detention in the Anti-Terrorism Aftermath?*, 9 GEO. J. ON POVERTY L. & POL'Y 1, 3 (2001) (emphasizing that U.S. anti-terrorism actions in the wake of September 11, 2001, including detention procedures, violate both civil and human rights); see also Jaya Ramji, *Legislating Away International Law: The Refugee Provisions of the Illegal Immigration Reform and Immigrant Responsibility Act*, 37 STAN. J. INT'L L. 117, 143-45 (2001) (discussing the changes in the detention procedures of immigrants in the

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and political rights usually are the kind that the United States readily embraces.¹²⁹ It is the additional set of economic and social rights that prove more controversial in the United States, though they remain elusive most everywhere.¹³⁰

My colleague, Mary Ann Glendon, writes powerfully about the negotiations over the U.N. Declaration of Human Rights.¹³¹ She directly rebuts the charges that the document, and by implication, the human rights movement, is an imposition by the West on the rest of the world.¹³² She demonstrates that the convergence around rights among representatives from across the globe, from developing and developed nations, from countries with diverse religious practices and economic systems, became possible precisely through the combination of political and civil with social and economic rights, with each bundle more familiar and congenial to some nations and more alien and remote to others.¹³³

The rhetoric and conception of human rights have much to offer domestic struggles in the United States today. Perhaps the hottest movement for progressive change among young people is the living

United States after the passage of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act, which made dramatic changes in the refugee processing system); Derek P. Jinks, *The Legalization of World Politics and the Future of the U.S. Human Rights Policy*, 46 ST. LOUIS U. L.J. 357 (2002) (stating that the United States has detained more than 1000 people in connection with the investigation of the September 11 attacks and arguing that these detentions satisfy the definition of "arbitrary detention" in violation of United States law as well as international human rights standards).

129. See Padideh Ala'i, *A Human Rights Critique of the WTO: Some Preliminary Observations*, 33 GEO. WASH. INT'L L. REV. 537, 544 (2001) (explaining civil and political rights include the right to free speech and fair trials, which are differentiated from economic, social and cultural rights, including the right to work, food, health, education, and housing).

130. See, e.g., Berta Esperanza Hernandez-Truyol & Shelbi D. Day, *Property, Wealth, Inequality, and Human Rights: A Formula For Reform*, 34 IND. L. REV. 1213, 1231-33 (2001) (discussing that economic rights "are independent with and indivisible from civil and political rights," but stating that while the United States promotes civil and political rights, it has not embraced economic, social and cultural rights).

131. See generally MARY ANN GLENDON, *A WORLD MADE NEW: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* 53-98 (2001) (providing a comprehensive look at the drafting of the U.N. Declaration of Human Rights during the brief interval between World War II and the Cold War).

132. See *id.* at 224-29 (refuting various arguments put forth in support of the view that the U.N. Declaration is a "western" document).

133. See *id.* at 73-78 (discussing a UNESCO philosophers' committee survey that showed some common views of human rights across cultures). Based on the survey, Jacques Maritain, one of the philosophers on the committee, suggested a declaration of human rights as a framework on which various cultures could agree, whatever their particular views. The idea was to make the declaration definite enough to have meaning, but general enough to allow different countries to adapt it to their own culture. This was one of the ideas that helped guide the writing and adoption of the U.N. Declaration. *Id.*

wage struggle.¹³⁴ Directly linked to issues of global economic integration, downward pressures on low wages jeopardize the economic subsistence of those who are most disenfranchised politically: immigrants, people who must work three jobs to pay the rent or people who have no political clout.¹³⁵ Real wages for custodians, guards and food service workers declined at Harvard University over the past decade not only because of the university's troubling outsourcing policies, undercutting union representation, but also because other jobs have left the region, and immigrant workers, willing to accept lower wages, have moved in. The poorest workers lacked both effective collective bargaining power and political clout within the university or the larger community.¹³⁶ As the distinction between the domestic and international worlds dissolves, and as any differences between political efficacy and economic well-being blur, so does the distinction between civil and human rights.¹³⁷

Environmental justice issues, such as exposing the practice of dumping harmful substances in poor and minority neighborhoods, further illustrate the tight connections between civil rights and human rights as they are conventionally understood.¹³⁸ Joining

134. See Rebecca O'Donnell, *The Allegheny County "Living Wage" Debate Marches On*, 21 LAWYERS J. 1, 1 (2001) (providing a history of the living wage concept and defining it as a wage that "would put a family of four above the poverty line and allow them to afford basic necessities," including food, transportation, clothing, personal care, healthcare, life insurance, a telephone and a newspaper); see also Terry Collingsworth, *The Key to Human Rights Challenge: Developing Enforcement Mechanisms*, 15 HARV. HUM. RTS. J. 183, 202 (2002) (noting that while the International Labor Rights Foundation has been using the Alien Tort Claims Act ("ATCA") to enforce internationally recognized norms against those individuals responsible for human rights violations, the ATCA has not been used to enforce living wage provisions on the international level).

135. See David L. Gregory, *Breaking the Exploitation of Labor?: Tensions Regarding the Welfare Workforce*, 25 FORDHAM URB. L.J. 1, 32-33 (noting that, during the Clinton Administration, there was debate about whether to impose a federal minimum or living wage on the pay given to welfare recipients). Republicans in the House of Representatives opposed a minimum wage requirement because they believed that welfare recipients are working to learn proper working habits, rather than to make money. *Id.*

136. See HARVARD COMM. ON EMPLOYMENT AND CONTRACTING POLICIES, FINAL REPORT: LOWER PAID WORKERS AT HARVARD UNIVERSITY (Dec. 19, 2001) (making recommendations on policies for employment practices and guidelines for contracting out services performed at Harvard), at http://www.hcecp.harvard.edu/hcecp_final_report.pdf.

137. See Jeremy Rifkin, *A New Social Contract*, 544 ANNALS AM. ACAD. POL. & SOC. SCI. 16, 19 (1996) (urging wealthy nations to consider directly investing in job creation through nonprofits which will allow people to regain employment and develop new transferable skills).

138. See Craig Anthony Arnold, *Planning Milagros: Environmental Justice and Land Use Regulation*, 76 DENV. U. L. REV. 1, 4-8 (1998) (arguing environmental justice struggles, such as against hazardous dumping, represent a form of racial discrimination due to the prevalence of dumping in minority neighborhoods, calling

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litigation, legislation and organizational reforms in statewide school initiatives, the link between civil and human rights can be seen in the shift from school finance litigation seeking tax equalization formulas to educational adequacy movements.¹³⁹ The human rights movement offers intellectual resources for progressives in this country. By linking the economic and the political, the human rights movement offers useful analytic frameworks. By depending upon nongovernmental organizations to place pressure on governments and mobilize populations, the human rights movement internationally exposes the potential power of the weak.¹⁴⁰

Networks of NGOs have generated the information, pressure, shame and rhetoric that in turn shape responses to genocide, refugees, third world debt, the HIV/AIDS epidemic, the struggle against land mines and even the struggle against the U.S. death penalty.¹⁴¹ Without a global sovereign authority to appeal to, the international human rights movement has had to help create institutional settings for advocacy and counters to global corporate powers that dwarf domestic governments.¹⁴² Similar strategies can inspire struggles within this country on behalf of those who are marginalized. Nongovernmental organizations stand at the center of efforts to build or rebuild civil society in Eastern Europe, West Africa, and South Asia.¹⁴³ Nongovernmental community groups support the arts, education, libraries, social justice and lay the ground for political empowerment and the new governance of societies in places still

for multiple responses beyond civil law).

139. See Avidan Y. Cover, Note, *Is "Adequacy" a More "Political Question" than "Equality?" The Effect of Standards-Based Education on Judicial Standards for Education Finance*, 11 CORNELL J.L. & PUB. POL'Y 403, 405 (2002) (noting that "[s]ome scholars view the shift in litigation strategy from claims of inequality to claims of inadequacy as an inevitable and logical response to court resistance to equalization.").

140. See Martha Minow, *The Work of Remembering: After Genocide and Mass Atrocity*, 23 FORDHAM INT'L L.J. 429, 435-36 (1999) (reviewing the role of non-governmental organizations ("NGOs") in the international human rights movement to assert that NGOs are the most qualified candidates to mobilize people along the lines of group affiliation against war, without undermining humanity as do many governments).

141. See generally Lynda Frost, *Trial Sovereignty: Back to the Future? Human Rights Education Programs for Indigenous Peoples: Teaching Whose Rights?*, 7 ST. THOMAS L. REV. 699, 708-13 (1995) (emphasizing that NGOs have a great impact on human rights because of their procedures of investigation and publication to denounce violations of human rights laws by international institutions).

142. See Michael Posner, *Human Rights and Non-Governmental Organizations on the Eve of the Next Century*, 66 FORDHAM L. REV. 627, 627-28 (1997) (arguing that NGOs should take on the role of creating a solid framework for international human rights laws and international institutions).

143. See generally Daniel C. Thomas, *International NGOs, State Sovereignty, and Democratic Values*, 2 CHI. J. INT'L L. 389, 390-92 (2001) (reviewing the role of NGOs within modern international diplomacy).

recovering from mass violence, economic devastation and epidemics.¹⁴⁴

Lawyers have been important players in the human rights movement, though they work alongside community activists, journalists, humanitarian aid workers and people with political or financial savvy. Civil rights lawyers in this country may resist the notion of human rights in their work because it is not much welcomed—or enforced—by U.S. courts, because litigation becomes a less significant tool, because the remedies and enforcement of human rights requires suasion, community pressure, negotiation and political struggle, as well as arguments crafted in briefs or proposed legislation.¹⁴⁵ Yet, as the U.S. courts become less sympathetic to claims framed in terms of civil rights, the language and techniques of the human rights movement offer a compatible but alternative avenue. Fact-gathering, insistence on transparency and reporting by powerful actors such as governments and corporations, articulating human need with the language of rights, mobilizing elites and mass groups, building new nongovernmental and intergovernmental organizations, shaming those who can be shamed for their violations of the dignity of others—these are the instruments of human rights.¹⁴⁶ Civil rights lawyers domestically already use many of these tools; why not join forces with those who mobilize around human rights?

Peter Cicchino turned to international human rights in one of his own stirring works.¹⁴⁷ It afforded him another way to challenge the self-doubting paralysis and sophisticated relativism of lefty lawyers and law students; it gave him a tool to remind people not just to know what occurs but to recognize the fact.¹⁴⁸ He noted that the language of human rights reminds us that all humans share basic needs for food, shelter, work, education, liberty and the capacity to resist

144. See, e.g., Frost, *supra* note 141, at 700 (discussing NGOs' roles in developing public education systems).

145. See generally Richard B. Lillich, *The United States Constitution and International Human Rights Law*, 3 HARV. HUM. RTS. J. 53, 79-81 (1990) (arguing that continued United States isolation from international human rights law gives rise to implicit dangers, and arguing that American courts should begin to incorporate international human rights law into U.S. Constitutional law).

146. See, e.g., Posner, *supra* note 142, at 627 (illustrating that NGOs have given structure to the way human rights organizations can best work to help people most in need of aid).

147. See Cicchino, *Defending Humanity*, *supra* note 79, at 3-9 (considering public interest lawyering in terms of international human rights).

148. See *id.* at 7 (stating that students and attorneys have lost a sense of agency and, as a result, have a "constricted" view of the possibilities that exist for them to use their advocacy skills to pursue social justice).

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oppressive denial of those needs.¹⁴⁹ Amid our voluminous, irrepressible variety, humans share these needs and also the miracle of our capacities.¹⁵⁰ Peter emphatically linked civil rights and human rights as he wrote about a fundamental sense that we share a common humanity.¹⁵¹ Public interest lawyering, he argued, needs an overarching moral or ethical theory.¹⁵² Not only could this afford meaning for those who pursue this work, but it also could help unite and strengthen people who could feel alone, in the dark.

The innovations of collaborative lawyering, CED and connections between civil rights and human rights offer light. In each, lawyers are among those recognizing our mutual life, our interconnection with those who our societies marginalize. We could be them, we often are them; we have capacities to help; we can struggle alongside others. It is important that awake people be awake, in the poet's words, or in Peter's, serve humanity and make trouble.¹⁵³

149. See *id.* at 4 (discussing that the Universal Declaration of Human Rights identifies basic common human needs, such as the physical needs of food, shelter and the psychological needs of relationships and education).

150. See *id.* (noting that if humans are denied basic needs, they may react violently).

151. See *id.* at 7 (emphasizing that all people share an underlying humanity that causes them to "act out" when they are denied basic needs). But see Leti Volpp, *A Defender of Humanity: In Honor of Peter Cicchino*, 9 AM. U. J. GENDER SOC. POL'Y & L. 45, 47-48 (2001) (writing a friendly rejoinder to Cicchino's view that identity politics is not part of a postmodern critical approach that has "exhausted" itself).

152. See Cicchino, *Defending Humanity*, *supra* note 79, at 4-5 (contending that people should not be treated as "things" and that oppression always meets resistance from human nature). But see Volpp, *supra* note 86, at 48 (asserting that in the struggle for human rights, "we need to be simultaneously attentive" to the accounts of global divides in power and "be honest and self-critical" about what truly works internationally).

153. See Cicchino, *Defending Humanity*, *supra* note 79, at 9 (stating "if we run away from trouble, we shall turn away virtue too").